

## NOTICE OF INTENT

### Department of Health and Hospitals Board of Medical Examiners

Physician Practice; Physician Collaboration with  
Advanced Practice Registered Nurses  
(LAC 46:XLV.Chapter 77)

Notice is hereby given that in accordance with the Louisiana Administrative Procedure Act, R.S. 49:950 et seq., and pursuant to the authority of the Louisiana Medical Practice Act, R.S. 37:1270, the Louisiana State Board of Medical Examiners (board) intends to adopt rules governing physician collaboration with advanced practice registered nurses, LAC 46:XLV.7701 et seq. The proposed rules provide for: the scope of the Subchapter (§7701); applicable terms and definitions (§7703); a prohibition against collaboration other than in compliance with the rules (§7705); exceptions to the rules (§7707); due diligence (§7709); eligibility and required components of a collaborative practice agreement (§7711); required information (§7713); collaborating physician authority and responsibilities (§7715); limitations on collaborative practice (§7717); continuous quality improvement and board access to documents (§7719); and the effect of violations (§7721). The proposed rules are set forth below.

#### Title 46

### PROFESSIONAL AND OCCUPATIONAL STANDARDS

#### Part XLV. Medical Professions

##### Subpart 3. Practice

#### Chapter 77. Physician Collaboration with Advanced Practice Registered Nurses

##### Subchapter A. General Provisions

##### §7701. Scope

A. The rules of this Chapter govern the practice of physicians in this state who engage in collaborative practice with an advance practice registered nurse who provides acts of medical diagnosis or prescriptions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 40:

##### §7703. Definitions

A. As used in this Chapter, the following terms shall have the meanings specified.

*Act*—the Louisiana Medical Practice Act or *Act*, R.S. 37:1261 et seq.

*Advanced Practice Registered Nurse* or *APRN*—a licensed registered nurse who is licensed as an

*advanced practice registered nurse* by the Louisiana State Board of Nursing.

*Board*—the Louisiana State Board of Medical Examiners, as constituted in the Louisiana Medical Practice Act.

*Clinical Practice Guidelines*—written or electronic documents, jointly agreed upon by the collaborating physician and APRN that describe a specific plan, arrangement, or sequence of orders, steps, or procedures to be followed or carried out in providing patient care in various clinical situations. These may include textbooks, reference manuals, electronic communications and Internet sources.

*Collaborating Physician*—a physician actively engaged in clinical practice and the provision of patient care with whom an APRN has developed and signed a collaborative practice agreement for prescriptive and distributing authority and who holds a current, unencumbered, unrestricted and valid medical license issued or recognized by the board and is in good standing with no pending disciplinary proceedings, and practices in accordance with rules of the board.

*Collaboration* or *Collaborate*—a cooperative working relationship between a physician and APRN to jointly contribute to providing patient care and may include but not be limited to discussion of a patient's diagnosis and cooperation in the management and delivery of health care with each provider performing those activities that he or she is legally authorized to perform.

*Collaborative Practice*—the joint management of the health care of a patient by an APRN performing advanced practice registered nursing and one or more consulting physicians. Except as provided in R.S. 37:930, acts of medical diagnosis and prescriptions by an APRN shall be in accordance with a *collaborative practice* agreement.

*Collaborative Practice Agreement*—a formal written statement addressing the parameters of the collaborative practice which are mutually agreed upon by an APRN and one or more physicians which shall include but not be limited to the following provisions:

a. availability of the collaborating physician for consultation or referral, or both;

b. methods of management of the collaborative practice which shall include clinical practice guidelines; and

c. coverage of the health care needs of a patient during any absence of the APRN or physician.

*Controlled Substance*—any substance defined, enumerated, or included in federal or state statute or regulations 21 CFR 1308.11-15 or R.S. 40:964, or any substance which may hereafter be designated as a

*controlled substance* by amendment of supplementation of such regulations or statute.

*Physician*—an individual lawfully entitled to engage in the practice of medicine in this state as evidenced by a license duly issued by the board.

*Practice Site*—a location at which a collaborating physician or APRN engages in the performance of his or her profession.

*Prescription or Prescription Drug Order*—an order from a practitioner authorized by law to prescribe for a drug or device that is patient specific and is communicated by any means to a pharmacist in a permitted pharmacy, and is preserved on file as required by law or regulation R.S. 37:1164.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 40:

#### **§7705. Prohibitions**

A. No physician shall collaborate with an APRN except in compliance with the rules of this Chapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 40:

#### **§7707. Exceptions**

A. This Chapter shall not apply to physician collaboration:

1. with an APRN who does not engage in acts of medical diagnosis or prescriptions, as described in R.S. 37:913(8) and (9); or those otherwise exempt from collaborative practice pursuant to R.S. 37:930;

2. for patients of any facility or clinic maintained or operated by the United States or any of its departments, offices or agencies; and

3. in cases of a declared emergency or disaster, as defined by the Louisiana Health Emergency Powers Act, R.S. 29:760 et seq., or as otherwise provided in title 29 of the *Louisiana Revised Statutes* of 1950, or the board's rules.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 40:

#### **Subchapter B. Due Diligence; Eligibility; Requirements of Collaborative Practice Agreement and Required Information**

#### **§7709. Due Diligence**

A. Before entering into a collaborative practice agreement with an APRN a physician shall insure that he or she possesses the qualifications specified by this Chapter.

B. A physician who collaborates with an APRN shall:

1. have an understanding of the rules of this Chapter and the laws and rules administered by the Louisiana State Board of Nursing concerning APRNs, R.S. 37:913 and LAC 46:4501 et seq., respectively; and

2. before commencing collaboration, verify that his or her collaborative practice agreement with the APRN has been approved by Louisiana State Board of Nursing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 40:

#### **§7711. Eligibility; Required Components of Clinical Practice Agreement**

A. To be eligible to engage in collaborative practice with an APRN a physician shall:

1. have a current, unencumbered, unrestricted and valid license to practice medicine duly issued by the board;

2. be actively engaged in the clinical practice of medicine and the provision of patient care, in the same field or area of patient care in which the collaborative practice is to take place;

3. have signed a collaborative practice agreement as described in R.S. 37:913(8) and (9) with an APRN that complies with the standards of practice prescribed by Sections 7715-7719 of this Chapter and, in addition, shall at a minimum include:

- a. a plan of accountability among the parties that addresses:

- i. prescriptive authority of the APRN and the responsibilities of the collaborating physician;

- ii. a plan for hospital and other healthcare institution admissions and privileges which provides that a collaborating physician must have hospital privileges at an institution before an APRN receives privileges at the same institution;

- iii. arrangements for diagnostic and laboratory testing; and

- iv. a plan for documentation of medical records;

- b. clinical practice guidelines as required by R.S. 37:913(9)(b), documenting the types or categories or schedules of drugs available and generic substitution for prescription by the APRN and be:

- i. mutually agreed upon by the APRN and collaborating physician;

- ii. specific to the practice setting;

- iii. maintained on site;

- iv. reviewed and signed at least annually by the APRN and physician to reflect current practice;

c. availability of the collaborating physician when he or she is not physically present in the practice setting;

i. for consultation, assistance with medical emergencies, or patient referral; and

ii. identifies a secondary (back-up) physician or physicians, who meets the eligibility requirements prescribed by this Chapter and signs the collaborative practice agreement;

iii. confirming that in the event the collaborating physician and any secondary (back-up) collaborating physician(s) are unavailable, the APRN will not prescribe;

d. documentation that patients are informed about how to access care when both the APRN and/or the collaborating physician are absent from the practice setting; and

e. an acknowledgment of the mutual obligation and responsibility of the APRN and collaborating physician to insure that all acts of prescriptive authority are properly documented;

4. if the APRN has been granted prescriptive authority by the Louisiana State Board of Nursing that includes controlled substances:

a. possess a current, unrestricted Louisiana controlled dangerous substance permit and a current, unrestricted registration to prescribe controlled substances issued by the United States Drug Enforcement Administration; and

b. include any specific instructions for medications which the collaborating physician may believe requires more stringent oversight.

B. A physician who does not satisfy the requirements prescribed by this Section shall not engage in collaborative practice with an APRN.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 40:

#### **§7713. Required Information**

A. Each physician shall report to the board annually, as a condition of the issuance or renewal of medical licensure, whether or not he or she is engaged in collaborative practice with an APRN, along with such other information as the board may request.

B. The information shall be reported in a format prepared by the board, which shall be made part of or accompany each physician's renewal application for medical licensure.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 40:

### **Subchapter C. Standards of Practice**

#### **§7715. Authority and Responsibilities**

A. A collaborating physician shall:

1. insure that patients of the collaborative practice are informed that the APRN is not a physician and is properly representing his/her credentials;

2. insure that the identity, contact information and availability of the collaborating physician, back-up physician(s) and APRN is available to patients of the collaborative practice;

3. if patients of the collaborative practice require hospital admission, have admitting privileges at a hospital or an arrangement in place to provide hospital coverage for such patients. In no event shall the plan for hospital admission of such patients consist solely of referral to a hospital emergency room; and

4. insure that any arrangement or financial relationship with an APRN is structured so as to prohibit interference or intrusion into the physician's relationship with patients or the exercise of independent medical judgment.

B. Non-Shared Practice Sites; Quality Assurance. In addition to the authorities and responsibilities required by Subsection A of this Section, where the collaborating physician does not share any practice site with the APRN, the collaborating physician shall:

1. visit the APRN's practice site at least monthly during regular office hours and review at least 10 percent or 20 charts, whichever is less, of patients of the collaborative practice for purposes of quality assurance and to assure that the APRN is practicing in accordance with the collaborative practice agreement. If the APRN has been granted prescriptive authority for controlled substances, such review shall also include controlled substances prescribed by the APRN to patients of the collaborative practice and may include the Board of Pharmacy Prescription Monitoring Program information; and

2. maintain a practice site that is geographically located so as to accommodate patient referrals by the APRN.

C. Exceptions. The provisions of Subsection B of this Section shall not apply to physician collaboration for patients of a hospital, nursing home or hospice licensed by the Louisiana Department of Health and Hospitals.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 40:

#### **§7717. Limitations**

A. A physician shall not collaborate with an APRN:

1. except in compliance with all applicable state and federal laws and regulations;

2. when the APRN and collaborating physician, or in the physician's absence a designated back-up physician meeting the qualifications of this Chapter, do not have the capability to be in contact with each other by telephone or other means of direct telecommunication;

3. who treats and/or utilizes controlled substances in the treatment of:

a. non-cancer related chronic or intractable pain, as set forth in §§6915-6923 of the board's rules;

b. obesity, as set forth in §§6901-6913 of the board's rules;

c. one's self, spouse, child or any immediate family member;

4. who dispenses medication, other than free or gratuitous non-controlled substances;

5. with an APRN who provides services that are not directly related to the services provided and scope of practice of the collaborating physician; and

6. who utilizes or prescribes any medication or classes of medications which the physician does not use in his or her current practice.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 40:

#### **§7719. Continuous Quality Improvement; Board Access to Documents**

A. A collaborating physician shall insure that copies of the collaborative practice agreement and clinical practice guidelines are:

1. maintained at the physician's and APRN's practice site(s);

2. annually reviewed, updated as appropriate, signed and dated by the collaborating physician and APRN; and

3. available for examination, inspection and copying upon request by the board or its designated employees or agents.

B. A collaborating physician shall comply with and respond to requests by the board for personal appearances and information relative to his or her collaborative practice.

C. Employees or agents of the board may perform an on-site review of a collaborating physician's practice at any reasonable time, without the necessity of prior notice, to determine compliance with the requirements of these rules.

D. A collaborating physician shall, within 15 days of the occurrence or discovery, notify the board in writing of evidence of an APRN's non-compliance with the collaborative practice agreement or incidents of unauthorized practice.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 40:

#### **Subchapter D. Sanctions**

##### **§7721. Effect of Violation**

A. Any violation or failure to comply with the provisions of this Chapter shall be deemed unprofessional conduct and conduct in contravention of the board's rules, in violation of R.S. 37:1285(A)(13) and (30), respectively, as well as violation of any other applicable provision of R.S. 37:1285(A), providing cause for the board to refuse to issue, revoke, suspend, or impose probationary or other terms, conditions or restrictions on any license to practice medicine in the state of Louisiana held or applied for by a physician.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 40:

##### **Family Impact Statement**

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of the proposed rules on the family has been considered. It is not anticipated that the proposed rules will have any impact on family, formation, stability or autonomy, as described in R.S. 49:972.

##### **Poverty Impact Statement**

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the impact of the proposed rules on those that may be living at or below 100 percent of the federal poverty line has been considered. It is not anticipated that the proposed rules will have any impact on child, individual or family poverty in relation to individual or community asset development, as described in R.S. 49:973.

##### **Provider Impact Statement**

In compliance with HCR 170 of the 2014 Regular Session of the Louisiana Legislature, the impact of the proposed rules on organizations that provide services for individuals with development disabilities has been considered. It is not anticipated that the proposed rules will have any impact on the staffing, costs or overall ability of such organizations to provide the same level of services, as described in HCR 170.

##### **Public Comments**

Interested persons may submit written data, views, arguments, information or comments on the proposed rules to Rita Arceneaux, Confidential Executive Assistant, Louisiana State Board of Medical Examiners, 630 Camp Street, New Orleans, LA, 70130, (504) 568-6820, ex. 242. She is responsible for responding to inquiries. Written comments will be accepted until 4 p.m., September 19, 2014.

### **Public Hearing**

A request pursuant to R.S. 49:953(A)(2) for a public hearing must be made in writing and received by the board within 20 days of the date of this notice. If a public hearing is requested to provide data, views, arguments, information or comments orally in accordance with the Louisiana Administrative Procedure Act, the hearing will be held on September 24, 2014, at 10 a.m. at the office of the Louisiana State Board of Medical Examiners, 630 Camp Street, New Orleans, LA 70130. Any person wishing to attend should call to confirm that a hearing is being held.

Cecilia Mouton, M.D.  
Executive Director

### **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Physician Practice; Physician Collaboration with Advanced Practice Registered Nurses**

#### **I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

Other than one-time costs for notice and rule publication estimated at a total of \$820 in FY 15, it is not anticipated that the proposed rules will result in any additional costs or savings to the board or other state or local governmental units. The board anticipates devoting some administrative resources to processing that portion of its annual renewal applications for physicians who serve as a Collaborating Physician (CP) for an Advance Practice Registered Nurse (APRN). While the number of CPs is unknown the information will be included in, and processed with, existing systems for annual renewals of medical licensure. The board anticipates it can absorb the projected modest increase in administrative workload with existing personnel and resources.

#### **II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

There is no anticipated effect on the revenue collections of the Board of Medical Examiners or any state or local governmental unit.

#### **III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

Any physician who serves as a CP: whose patients of a collaborative practice require hospitalization but he or she does not have hospital admitting privileges at any hospital *or* an arrangement to provide hospital coverage for such patients at any hospital; who does not share any practice location with the APRN *and* does not already visit the APRN's practice site at least monthly for purposes of quality assurance *e.g.*, chart review and insuring practice in accord with the collaborative practice agreement (CPA) *or* is not geographically located so as to accommodate patient referrals by the APRN (collaboration for patients of licensed hospitals, nursing homes and hospices excepted), would be

directly affected by the proposed amendments and may experience an increase in costs or decrease in revenue to an extent that is not quantifiable.

While it is believed that few physicians who serve as CPs, or patients or other providers, would be impacted by the proposed requirements it is not possible to estimate the proposed Rules' impact in these respects as no information or data is available either as to the number of physicians who collaborate with APRNs or the extent to which those that do may/may not already comply with the proposed requirements. However, based on the board's experience in carrying out its investigative responsibilities, reviewing practices and responding to inquiries, and because many of the provisions contained in the proposed rules are already contained in regulations governing APRNs who collaborate with CPs, it is believed that any impact on collaborative practices would be minimal. Among other items, the proposed rules also require physicians to: insure eligibility to serve as a CP, have an understanding of the applicable law/rules and verify approval of an APRN's CPA before commencing collaboration; insure that the credentials, identity, contact information and availability of the CP and APRN are made available to patients; report whether they serve as a CP for an APRN on their annual renewal application for medical licensure; make available to the board upon request copies of their CPA and clinical practice guidelines and report evidence of non-compliance or unauthorized practice to the board. The board does not anticipate that these requirements will have a material effect on paperwork or workload of affected physicians.

#### **IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

It is not anticipated that the proposed rules will have any significant impact on competition or employment in either the public or private sector.

Cecilia Mouton, M.D.  
Executive Director  
1408#052

John D. Carpenter  
Legislative Fiscal Officer  
Legislative Fiscal Office